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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A.No. 168 of 2005
Date of decision:23.10.2006

Commissioner of Central Excise, Chandigarh ...Appellant

Versus

M/S Atma Tube Products Ltd. & another ...Respondents

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Gurpreet Singh, Central Government Counsel
for the appellant.

Sh.Chetan Dayal, Advocate for the respondents.

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JUDGMENT

The Revenue is aggrieved by the reduction of penalty imposed from Rs.70,764/- to Rs.15,000/-. It is submitted that the finding having been recorded that assessee had intention to evade duty, reduction of penalty by the Tribunal was perverse and question of perversity was a substantial question of law.

In C.E.A.No.56 of 2005 (Commissioner of Central Excise, Delhi-IV, New CGO Complex, NH-IV, Faridabad Vs. lllpea Paramount Pvt. Ltd.), decided on 21.7.2006, it has been held by this Court that if a case for imposing penalty is made out under Section 11AC of the Central Excise Act, 1944, penalty equal to the amount of duty is required to be imposed.

In view of above judgment, once finding of intentional evasion was upheld, it was not open to the Tribunal to reduce the amount of penalty.

The finding of the Tribunal is as under:-

"I have heard both the sides and gone through the record. The shortage of the finished goods (23.863 m.t.) was not disputed by the respondents, when the officers of Central

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Excise carried out the physical verification. This shortage was only on account of clearance of the goods by the respondents without payment of duty. There was thus intentional evasion of duty by the respondents. Therefore, penalty is imposable on them. Under these circumstances, the ratio of law laid down in the case of Rashtriya Ispat Nigam Ltd.(Supra), keeping in view these facts, it not attracted to the present case. However, keeping in view the facts and circumstances of the case, that duty amount of Rs.70,764/- had already been deposited by the respondents, the penalty of Rs.15,000/- is imposed on respondent No.1."

After hearing the learned counsel for the parties, we are of the view that reduction of penalty by the Tribunal after recording of finding of intentional evasion has to be held to be perverse and cannot be sustained.

Accordingly, we allow this appeal and set aside the impugned order of the Tribunal and restore the order of penalty imposed by the Adjudicating Authority.

(Adarsh Kumar Goel)
Judge

October 23,2006 **(Rajesh Bindal)**
Pka **Judge**